

Senator Mike Dmitrich proposes the following substitute bill:

UNFAIR BUSINESS PRACTICES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

Ron Allen

Curtis S. Bramble

LONG TITLE

General Description:

This bill enacts provisions within the Utah Criminal Code related to unfair competition.

Highlighted Provisions:

This bill:

- ▶ defines unfair competition; and
- ▶ provides a private right of action for a person injured by unfair competition.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-5a-101, Utah Code Annotated 1953

13-5a-102, Utah Code Annotated 1953

13-5a-103, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-5a-101** is enacted to read:



CHAPTER 5a. UNFAIR COMPETITION ACT

13-5a-101. Title.

This chapter is known as the "Unfair Competition Act."

Section 2. Section 13-5a-102 is enacted to read:

13-5a-102. Definitions.

As used in this chapter:

(1) "Control" means:

(a) ownership of more than 5% of the voting shares or ownership interests of an entity;

(b) the power to vote more than 5% of the voting shares of an entity; or

(c) the ability to influence the management of an entity.

(2) "CYBER-TERRORISM" MEANS:

(a) THE UNLAWFUL USE OF COMPUTING RESOURCES TO INTIMIDATE OR COERCE

OTHERS;

(b) ACCESSING A COMPUTER WITHOUT AUTHORIZATION OR EXCEEDING AUTHORIZED ACCESS.

(c) WILLFULLY COMMUNICATING, DELIVERING, OR CAUSING THE TRANSMISSION OF A PROGRAM, INFORMATION, CODE, OR COMMAND WITHOUT AUTHORIZATION OR EXCEEDING AUTHORIZED ACCESS;

(d) INTENTIONALLY OR RECKLESSLY:

(i) INTENDS TO DEFRAUD OR MATERIALLY CAUSE DAMAGE OR DISRUPTION TO ANY COMPUTING RESOURCES OR TO THE OWNER OF ANY COMPUTING RESOURCES; OR

(ii) INTENDS TO MATERIALLY CAUSE DAMAGE OR DISRUPTION TO ANY COMPUTING RESOURCES INDIRECTLY THROUGH ANOTHER PARTY'S COMPUTING RESOURCES.

"Depository institution" is as defined in Section 7-1-103.

Except as provided in Subsection (a) , "unfair competition" means (a) AN INTENTIONAL

business

act or practice that:

(i) (A) is unlawful, unfair, or fraudulent; and

(ii) (B) leads to a material diminution in value of intellectual property ; AND

(ii) IS ONE OF THE FOLLOWING:

"UNFAIR COMPETITION" INCLUDES:

(i) DAMAGING AN INTERNET WEBSITE;

(ii) COMPUTER HACKING;

(iii) (A) CYBER-TERRORISM;

(iv) MISUSE (B) INFRINGEMENT OF A PATENT, TRADEMARK, OR TRADE NAME;

40f ~~§~~ ~~(v)~~ (C) ~~h~~ A SOFTWARE LICENSE VIOLATION;
40g ~~§~~ ~~(vi)~~ MISUSE OF AN INTERNET DOMAIN NAME;
40h ~~§~~ ~~(vii)~~ MISLEADING INTERNET DOMAIN NAME DIRECTIONS; OR ~~h~~
40i ~~§~~ ~~(viii)~~ (D) ~~h~~ PREDATORY HIRING PRACTICES ~~h~~ ~~;~~
40j ~~§~~ ~~(ix)~~ ENCOURAGING A PERSON TO VIOLATE A PROVISION OF AN EMPLOYMENT CONTRACT
40k THAT PROHIBITS COMPETITION OR DISCLOSURE; OR
40l ~~§~~ ~~(x)~~ MAKING FALSE OR MISLEADING CLAIMS ~~h~~ .
41 ~~(b)~~ ~~§~~ ~~(c)~~ ~~h~~ §
41 (b) Notwithstanding § ~~[Subsection]~~ ~~h~~ ~~[SUBSECTIONS]~~ SUBSECTION ~~h~~ § ~~h~~ ~~(3)~~ (4) ~~h~~ (a)
41a § ~~h~~ ~~(b)~~ ~~h~~ § . "unfair
41a competition" does not include the
42 departure and hiring of an employee by a competitor.
43 Section 3. Section **13-5a-103** is enacted to read:
44 **13-5a-103. Private action for unfair competition.**
45 (1) (a) Except as provided in Subsection (2), a person injured by unfair competition
46 may bring a private cause of action against a person who engages in unfair competition.

47 (b) In an action under this Subsection (1), a person injured by unfair competition may
48 recover:

49 (i) actual damages;

50 (ii) costs and attorney fees; and

51 (iii) if the court determines that the circumstances are appropriate, punitive damages.

52 (2) A person may not bring an action described in Subsection (1) against:

53 (a) a depository institution; or

54 (b) an entity that:

55 (i) controls a depository institution;

56 (ii) is controlled by an entity that controls a depository institution; or

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(iii) is controlled by a depository institution.